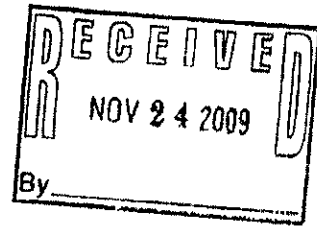


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9 **BEFORE THE**
10 **OFFICE OF ADMINISTRATIVE HEARINGS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition for Interim
Suspension Order Against:

13 **DAVID JAMES TROWER**
14 **1730 S Victoria Ave**
15 **Riverside, CA 92505**
16 **Registered Nursing License No. RN 420734**

17 Respondent.

OAH Case No. 2009110497

~~ORDER GRANTING~~
INTERIM SUSPENSION

Date: November 24, 2009

Time: 9:00 p.m.

Place: Office of Administrative
Hearings
1350 Front Street,
Suite 6022
San Diego, CA 92101

18
19 The Petition of Louise R. Bailey, M.Ed., R.N., Interim Executive Officer of the Board of
20 Registered Nursing, Department of Consumer Affairs, State of California, for an interim
21 suspension order pursuant to Business and Professions Code section 494, having been heard on
22 Tuesday, November 24, 2009, the administrative law judge having received and considered the
23 Petition and accompanying points and authorities, exhibits and oral argument, good cause having
24 been shown, determines that the public health, safety or welfare will be endangered unless the
25 order is issued and hereby grants the Petition and makes the following order:

26 ///

27 ///

28 ///

1 IT IS ORDERED THAT:

2 1. Registered Nurse License Number RN 420734 issued to David James Trower
3 is hereby suspended pending a full administrative determination of Respondent's fitness to
4 practice nursing.

5 2. Respondent shall not:

6 a. Practice or attempt to practice any aspect of nursing in the State of
7 California until the decision of the Board following an administrative hearing;

8 b. Be present in any location which is maintained for the purpose of nursing,
9 or at which nursing is practiced, for any purpose, except as a patient, *or to visit family and friends.* J

10 c. Advertise, by any means, or hold himself out as practicing or available to
11 practice any aspect of nursing.

12 3. Respondent shall immediately deliver to the Board, or its agent, for safekeeping
13 pending a final administrative order of the Board in this matter, all indicia of his licensure as a
14 registered nurse or as a nurse anesthetist, including, but not limited to, his wall certificate(s) and
15 wallet card(s) issued by the Board.

16 4. Such other and further action as it is necessary, and proper to enforce this
17 Interim Suspension Order, and to protect the People of the State of California.

18 *5. a hearing on the accusation shall
be held no later than 12/24/09 unless waived*

19 DATED: *11/24/09.*

20 *J. Adler*
JAMES ADLER

21 Office of Administrative Hearings
22 State of California
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28

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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2010-264

12 **DAVID JAMES TROWER**
13 **6684 Lookout Terrace**
14 **Riverside, CA 92505**

A C C U S A T I O N

15 **Registered Nursing License No. RN 420734**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about November 30, 1987, the Board of Registered Nursing issued Registered
23 Nursing License Number 420734 to David James Trower (Respondent). The Registered Nursing
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on July 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

...

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section 290
3 of the Penal Code.

4 11. California Code of Regulations, title 16, section 1445, states:

5 ...

6 (b) When considering the suspension or revocation of a license on the grounds that a
7 registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of
8 such person and his/her eligibility for a license will consider the following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with any terms of parole, probation, restitution
13 or any other sanctions lawfully imposed against the licensee.

14 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of
15 the Penal Code.

16 (6) Evidence, if any, of rehabilitation submitted by the licensee.

17 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 BACKGROUND

22 13. This matter came to the attention of the Board when, as a condition of renewing
23 respondent's nursing license, he was required to obtain a DOJ/FBI live scan fingerprint
24 examination. On or about May 27, 2009, the live scan revealed that respondent has several
25 convictions involving the use of alcoholic beverages. Thereafter, the Board obtained the majority
26 of the conviction documents which show that over the past thirteen years respondent has engaged
27 in a pattern of excessive drinking leading to three arrests for being drunk in public and four
28 convictions for driving under the influence of alcohol.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (November 14, 1996 Criminal Conviction for
3 Driving Under the Influence of Alcohol)

4 14. Respondent is subject to disciplinary action under Code sections 490, 2761(f), and
5 2762(b) and (c), in that he was convicted of a crime involving alcohol that is substantially related
6 to the qualifications, functions, and duties of a registered nurse.

7 15. Respondent's first conviction for driving under the influence of alcohol (DUI)
8 occurred on November 14, 1996, when in the Superior Court of California, County of Ventura,
9 *People of the State of California v. David James Trower*, in Case No. 96 S003547 MA,
10 respondent was found guilty by the court of violating Vehicle Code section 23152(b), driving
11 with a blood alcohol level above .08 percent. He was sentenced to three years probation, to pay
12 fees and attend and complete the First Conviction Drinking Driver Program, among other things.
13 On October 14, 1997, respondent admitted a probation violation and was re-referred to the First
14 Conviction Program. On July 10, 1998, respondent was again re-referred by the court to the First
15 Conviction Program.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (July 10, 2001 Criminal Conviction for Driving Under
18 the Influence of Alcohol on June 10, 2001)

19 16. Respondent is subject to disciplinary action under Code sections 490, 2761(f), and
20 2762(b) and (c), in that he was convicted of a crime involving alcohol that is substantially related
21 to the qualifications, functions, and duties of a registered nurse.

22 17. Respondent's second conviction for DUI occurred on July 10, 2001.

23 **THIRD CAUSE FOR DISCIPLINE**

24 (April 3, 2006 Criminal Conviction for Driving Under
25 the Influence of Alcohol on January 28, 2006)

26 18. Respondent is subject to disciplinary action under Code sections 490, 2761(f), and
27 2762(b) and (c), in that he was convicted of a crime involving alcohol that is substantially related
28 to the qualifications, functions, and duties of a registered nurse.

19. On April 3, 2006, respondent was convicted for the third time of violating Vehicle Code section 23152(a), DUI, in *People of the State of California v. David James Trower*, Case No. 2006003800 MA, in the Superior Court, for the County of Ventura. He was sentenced to three years probation, ordered to complete the First Conviction Program for Drinking Drivers for 90 days, among other terms and conditions of probation. On September 29, 2006, respondent's probation was revoked due to a probation violation. Consequently, he was ordered not to drink alcohol and to attend the level 2 alcohol treatment program.

FOURTH CAUSE FOR DISCIPLINE

(October 23, 2006 Conviction for Being Drunk in Public on August 28, 2006)

20. Respondent is subject to disciplinary action under Code sections 490, 2761(f), and 2762(b) and (c), in that he was convicted of a crime involving alcohol that is substantially related to the qualifications, functions, and duties of a registered nurse.

21. On October 23, 2006, respondent was convicted for violating Penal Code section 647(f) public intoxication, in *People of the State of California v. David James Trower*, in the Superior Court, Ventura County, Case No. 2006032861. He was sentenced to three years probation, payment of fines and penalties, and additional terms of probation.

FIFTH CAUSE FOR DISCIPLINE

(February 12, 2008 Conviction for Driving Under
the Influence of Alcohol on September 4, 2007)

22. Respondent is subject to disciplinary action under Code sections 490, 2761(f), and 2762(b) and (c) of the Code in that he was convicted of a crime involving alcohol that is substantially related to the qualifications, functions, and duties of a registered nurse.

23. On February 12, 2008, in a case entitled *People of the State of California v. David James Trower*, Case No. TWV 702843, in the Superior Court, County of San Bernardino, respondent was convicted for the fourth time of violating Vehicle Code section 23152(b), driving with a blood alcohol level above .08 percent. On March 26, 2008, he was sentenced to three years probation, to serve 210 days in custody in the weekender program, report to the Glen Helen Rehabilitation Center, and to install an ignition interlock device on all of his vehicles. On August


1 12, 2008, the court was notified that respondent failed to appear for the weekender program.
2 Respondent's probation was revoked and a warrant issued for his arrest. On August 26, 2008, the
3 warrant was recalled and respondent's probation was reinstated on the same terms and conditions.
4 On November 10, 2008, respondent's probation was modified to require respondent to serve 210
5 days in custody full time. It appears that respondent was in custody until approximately April 1,
6 2009.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nursing License Number 420734, issued to
11 David James Trower.
- 12 2. Ordering David James Trower to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16

17 DATED: 11/16/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

22 SD2009804942

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